Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-305

UNITED STATES OF AMERICA,

Petitioner

—*v.*—

J. LEE HAVENS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 24, 1979
CERTIORARI GRANTED NOVEMBER 26, 1979

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-305

UNITED STATES OF AMERICA,
Petitioner

—*v.*—

J. LEE HAVENS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

No. 77-479-CR-JLK

UNITED STATES OF AMERICA

v.

J. LEE HAVENS

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
10-3-77	Complaint Filed
10-19-77	Indictment
12-15-77	Motion to Suppress Evidence
1-23-78	Government's Memorandum of Law Re: Defendant's Motion to Suppress
1-25-79	Findings of Fact And Recommendation of Magistrate. Recom: Deft. Motion to Suppress be Granted as to Items Seized as the Result of Search of Luggage; Denied as to Items Seized During Search of Person.
1-30-79	Transcript of Hearing of 1-18-79 at 2:00 p.m. before Magistrate Shapiro.
2-6-78	Criminal Jury Trial Commenced Jury Empaneled. 2-9-78 Criminal Jury Trial. 2-10-78 Continued and Concluded. Verdict: Guilty as to each of Counts 1, 2, 3. Defendant Adjudged Guilty.
4-3-78	Defendant Sentenced
4-3-78	Notice of Appeal Filed.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 78-5411

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

J. LEE HAVENS, DEFENDANT-APPELLANT

DATE	PROCEEDINGS
6-10-78	Certified Record Filed
6-11-78	Cause Docketed
4-5-79	Judgment of the District Court Reversed (Wisdom, Goldberg and Vance, JJ.)
6-1-79	Petition for Rehearing With Suggestion for Rehearing *En Banc.*
6-27-79	Petition for Rehearing Denied; Petition for Rehearing *En Banc* is denied.

RELEVANT PORTIONS OF TRIAL TRANSCRIPT

[14] Thereupon:

WILLIAM J. PERCIVAL

was called as a witness on behalf of the Government who, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MILLER:

Q. By whom are you employed, sir?
A. U.S. Customs.
Q. And, tell us, please, your educational-professional experience.
Excuse me—
A. I'm a retired—
Q. —for the record, state for the record, and the jury, your name.
A. William J. Percival. I'm a retired Army officer and I have been employed with Customs seven years.
Q. And, in what capacity are you employed by Customs, sir?
A. I'm a Customs Patrol Officer.
Q. Now, Mr. Percival, were you employed by Customs on October 7, 1977?
A. October the 7th?
[15] Q. Second.
A. Yes, sir.
Q. Tell us what, if anything, happened on that day?
A. On October the 7th, I was standing in Customs; we wear civilian clothes; we're armed, but we have the same authorities as Customs Inspectors.
I was observing the baggage coming up the carousel from Braniff 974.
Q. By the way, where was this, sir? Is this at Miami International Airport?
A. Yes, sir. Yes.

Q. Please go ahead.
A. —we observed passengers, et cetera.
So, I saw a gentleman that was dressed in a suit, who definitely had bulges in his lower abdomen and his side area.
I had a partner working with me; I pointed out this gentleman to my partner.
He observed when the gentleman bent over, he also had bulges in his back when he sent to pick up his luggage.
After the gentleman had gone through Customs, prior to exiting, we stopped the gentleman; [16] introduced ourselves as Customs officers; he told us his name was Mr. McLeroth.
We told him why we stopped him. We requested him to come back to a search room we have there in the Customs area.
When we arrived there we told him the reason he was brought back for a secondary was a bulge in his lower abdomen area.
We asked him if he was carrying a cast or a body brace.
He said, "No."
So, we asked him to drop his trousers and his underwear, and we observed that he still had some sort of underwear on.
Q. Is this normal procedure for Customs?
A. For this, this is our job; yes, sir, for secondary inspections.
Q. Okay.
A. Under the underwear he still had on, we could still see he had bulges, so we asked him to remove whatever that was and put it on the table.
He said he couldn't without taking off his clothes. So, we had him go ahead and take off his clothes.
[17] He was wearing a corset with a supporter. He removed that.
Underneath that was a body stocking which covered his whole body tight knit. He removed that.
Under that was a tee shirt with eight pockets in front and four pockets in back.

Each of these pockets were sewn shut. He removed this tee shirt; placed it on a table; we opened one of the pockets; it contained a plastic bag.
I opened one of the plastic bags; it contained a white powder.
We have test kits in the search room. I took a portion of the white powder, ran what we call a field test on it, and it showed positive for cocaine.
At that time, we advised Mr. McLeroth that he was under arrest.
We read him his rights.
Q. First, Officer Percival, let me ask you to identify some items, please.
A. Yes, sir.
MR. MILLER: May I approach the witness, please, Your Honor?
THE COURT: All right.
[18] MR. MILLER: I'd like this marked as Exhibit No. 1, please.
THE CLERK: Marked as Exhibit No. 1 for Identification.

[Thereupon, the item referred to was marked for Identification as Government Exhibit No. 1.]

MR. MILLER: Can we make this one joint exhibit, Your Honor, two bags, or do you want to make it 1 and 2?
THE COURT: Perhaps we will make it 1 and 2.

[Thereupon, the item referred to was marked for Identification as Government Exhibit No. 2.]

THE COURT: Okay, Exhibits 1 and 2 for Identification.

BY MR. MILLER:

Q. Officer Percival, I show you what has been marked for Identification as Government's Exhibit No. 1 and ask if you can look at the contents contained in this plastic bag and identify the contents.
A. Yes, sir, plus we have our initials and date on each of these bags.

[19] Q. Are your initials on these bags?
A. Yes, sir.
Q. And, how many bags are in there? Can you tell?
A. There are thirteen total bags. I don't know how many is in this particular package.
Q. I'd ask you also to look at Exhibit No. 2 marked for Identification and ask if you can look at these and determine, sir, if those are the bags that you found on Mr. McLeroth on October 2nd, 1977.
A. Yes, sir.
Q. Now, how can you determine those are those bags?
A. We numbered each bag 1 through 12, plus here's my initials and the date of my initials and the officer that was working with me.
Q. Are they marked on each specific bag?
A. Yes.
Q. So, on thirteen bags you have thirteen initials?
A. Yes, sir.
This is 10 of 13 here.
Q. Okay. Did you initial these in the presence—
[20] A. In the presence of who, sir?
Q. Of Mr. McLeroth.
A. No.
Q. You did these afterwards, sir?
A. Yes, sir.
Q. Okay. And you took a sample, you say?
A. Yes.
Q. And what did that sample show?
A. It showed positive for cocaine. It's a field test that we make on the spot.
However, we later take samples from each container and send it to our lab, U.S. Customs Lab, then I think the DEA also does the same thing.
Q. And, is this procedure done pursuant to procedures of Customs?
A. This is standard procedure; yes, sir.
MR. MILLER: Your Honor, may I approach the witness?
THE COURT: Yes.

BY MR. MILLER:

Q. Officer Percival, I show you what has been previously marked as Government's Exhibit No. 2, which I will change to Exhibit No. 3, and ask if you can please identify Government's Exhibit No. 3.
[21] A. Yes. This is the—what I call a corset with supporter which we initialled and dated.
Q. Are your initials on there?
A. Yes, sir.
Q. And, can you find them on that item?
A. Yes, sir.
Q. And, did you find this on Mr. McLeroth?
A. Yes, sir.
Q. I also show you what has been marked previously as Government's Exhibit No. 2, which I will mark as No. 3, and ask you if you can identify what that item is.
A. Yes, sir. We call it a body—I forget the word I used—but this was worn under the girdle. This was taken off of him. We marked it on the collar here—it's my initials and date.
Q. On what date is that, sir?
A. 10/2/77.
Q. And, that was worn over the—
A. This was under that, sir.
Q. And, lastly, I show you a third item in Government's Exhibit No. 3, and ask if you can look at this and tell us where you found this and if you can identify this.
[22] A. Yes, sir. He was wearing this under this. This was next to his body. This is the front with eight pockets—
Q. Can you demonstrate where the pockets are for the people of the jury?
A. There's eight pockets here—or, excuse me—eight pockets in front here. Each of these were sewed by hand.
And four pockets in the rear.
Q. And, where did you find this shirt?
A. This was next to his skin; the last garment he had on.

Q. And, just to clarify—since we have gone through three documents—that was next to his skin?
A. Yes, sir.
Q. What was on top of that?
A. This.
Q. What was on top of that?
A. This.
Q. And, contained in the shirt, did you find anything, sir?
A. Yes, sir. There was plastic bags in each of these. One of them contained two plastic bags. [23] That's how you get thirteen bags out of twelve pockets.
Q. Okay.
A. And we initialled—on the bottom here.
Q. Are those your initials, sir?
A. Yes.
Q. And, are they dated, also, sir?
A. 10/2/77.
MR. MILLER: Thank you. Your Honor, at this time, I would like to offer the three items identified by the witness; the corset, the body shirt and the tee shirt, into evidence.
THE COURT: All right.
MR. McCAIN: What are those numbers on your exhibit?
MR. MILLER: 3. Government's Exhibit 3.
MR. McCAIN: Okay: All part of 3?
MR. MILLER: Yes.
MR. McCAIN: No objection.
THE COURT: All right, the three items are admitted into evidence as Government's Exhibit 3.

[Thereupon, Government's Exhibit No. 3 was received into Evidence.]

[24] BY MR. MILLER:

Q. Now, after you found these items which have been marked and admitted into Evidence as Government's Exhibit 3 and Government's Exhibit 1 and 2, the thirteen packages, what did you do?

A. As I stated before, we arrested Mr. McLeroth at that time and I read him his rights from a mimeographed form that we have.
Mr. McLeroth signed that he had been read his rights; it was witnessed by myself and the officer I was working with.
At that time, due to the size of the search room, we took him back to our office, which has our paperwork and a little more working room.
We have certain forms that we have to fill out; information on Mr. McLeroth—we have to weigh the contraband—
Q. Did you weigh the contraband?
A. Yes, sir.
Q. And what weight did you come to?
A. I believe it was 1,620—some grams, sir. I forget the last digit.

* * * * *

[GIL SHARETT—DIRECT EXAMINATION]

[31] BY MR. MILLER:

Q. Now, Agent Sharett, tell the ladies and gentlemen of the jury what you told me regarding September 26th, 1977.
A. Mr. McLeroth stated that on the 26th of September, 1977, he met Mr. Havens at Mr. Havens' law office in Ft. Wayne, Indiana, and the purpose of the meeting was for Mr. McLeroth to fly to Lima, Peru, to act as a courier to bring back cocaine to the Ft. Wayne, Indiana, area.
Mr. McLeroth stated he was advised to go ahead and leave Ft. Wayne by Mr. Havens and Mr. Havens would later join him in Lima, Peru.
That the reason for Mr. McLeroth traveling by himself was that Mr. Havens was in the process of rounding up the rest of the money to purchase the cocaine.
Mr. McLeroth departed the Ft. Wayne, Indiana area on the 26th of September and arrived at Lima, Peru, on the 27th, where, at which time he was joined on the 27th of September by Mr. Havens in Lima, Peru.

[32] Both subsequently met with a subject, Peruvian male by the name of Augusto Gonzales, where they obtained on—I believe it was on the 30th of September—obtained half of the cocaine from Mr. Gonzales and again received the remaining of the cocaine on the following day.

The cocaine was packaged in plastic packages at Mr. Augusto Gonzales' residence where, at which time, it was placed in a makeshift tee shirt which was put on Mr. McLeroth to body carry outside—back to the United States.

Q. Did he say where they stayed in Lima, Peru?

A. Stayed at the Miraflores Hotel in Lima, Peru.

MR. McCAIN: We are going to object to the form of the question.

What the prosecutor is asking is, can he state. He can state what Mr. McLeroth told him. He cannot state that—

THE COURT: Yes. All right, sustained.

BY MR. MILLER:

Q. Did Mr. McLeroth inform you as to where he stayed?

[33] A. Mr. McLeroth stated he stayed at the Miraflores Hotel in Lima, Peru.

Q. Did Mr. McLeroth inform you as to where Mr. Havens stayed?

A. Yes; at the same hotel.

Q. Now, after Mr. McLeroth told you they packaged the cocaine in a makeshift shirt, what did he then say?

A. He said that the shirt was put on him; he put the shirt on and the packages containing the cocaine were sewn in the makeshift tee shirt, and he body carried it back to Miami where he was subsequently discovered at the U.S. Customs.

Q. Did he tell you how he arrived back to Miami?

A. Yes; he flew back to Miami on Braniff Flight 974.

Q. And, on what date was that, sir?

A. What date did he arrive in Miami?

Q. Yes.

A. October 2nd, 1977.

Q. And did Mr. McLeroth tell you how Mr. Havens came back to Miami?

A. Mr. Havens came back to Miami on the [34] same flight.

Q. Was this related to you by Mr. McLeroth?

A. That's correct.

Q. Now, did you receive any items from Mr. McLeroth when you interrogated him at the airport on October 2, 1977?

A. Yes. I received an airline ticket which Mr. McLeroth used.

MR. MILLER: Your Honor, may I approach the witness, please?

THE COURT: Yes.

BY MR. MILLER:

Q. Special Agent Sharett, I show you what has been marked previously for identification as Government's Exhibit 4 and ask if you can look at that and identify it.

A. Yes. This is the ticket that I received from Mr. McLeroth; has my initials and date on the bottom right hand corner.

Q. And, what does that ticket show?

A. The airline ticket showed the itinerary of a Ft. Wayne; Atlanta; Miami; Miami; Lima, Peru; Miami; Atlanta; return Ft. Wayne.

Q. And you received that from Mr. McLeroth [35] on the 2nd?

A. That's correct.

Q. And you initialled that?

A. Yes, I initialled it.

* * * * *

[41] Q. Would you tell us what Mr. McLeroth told you, sir.

A. Mr. McLeroth stated that on or about April 26, 1977, he, along with Mr. Havens, had flown to Lima, Peru and came back to Miami, Florida, on or about the 30th of April, 1977, at which time Mr. McLeroth stated that he body carried approximately three and a half pounds of cocaine which was taped to his body by Mr.

Havens—on Mr. McLeroth's body—and was body carried back to Fort Wayne, Indiana.

Mr. McLeroth stated that on their arrival at Fort Wayne, Indiana, he was met at the Indiana airport, Fort Wayne Airport, by Mr. Havens' wife and son and both Mr. McLeroth and Mr. Havens were driven over to Mr. Havens' law office at the Metropolitan Building in Fort Wayne, Indiana, at which time Mr. McLeroth and Mr. Havens went upstairs to the office where Mr. Havens removed the packages which were taped to Mr. McLeroth's body and secured them in his office.

Q. Did you have another conversation with Mr. McLeroth regarding—

A. Yes. There was another trip which Mr. McLeroth stated that they made on the 7th of September, [42] 1977 for the purpose of bringing back cocaine into the United States to Fort Wayne, and while on that trip in Lima they were unable to obtain cocaine because the source of the cocaine allegedly could not get a hold of any cocaine for them to bring back and they came back to Fort Wayne on around the 16th of September.

Q. Now, Special Agent Sharett—

THE COURT: Now, ladies and gentlemen of the jury, you are instructed that the testimony you just heard may be considered by you in determining the intent, the intent of the defendant.

It may not be considered by you as having any bearing on whether or not the defendant was involved with another crime.

Go ahead.

MR. MILLER: Thank you, Your Honor.

BY MR. MILLER:

Q. Agent Sharett, I will ask you one last question, sir. During the time you received the cocaine, the items marked 1 and 2, did you at any time alter or change the contents of these envelopes?

A. No, I did not.

* * * * *

[48] BY MR. CULVERHOUSE:

Q. How long did you talk with Mr. McLeroth on the 2nd of October, 1977?

A. We talked—we spoke for several hours total, but the beginning of the initial conversations with Mr. McLeroth was interrupted with the proceeding we had, taking fingerprints and processing him, the onset of the investigation, we talked with him, I'd say, for approximately twenty minutes, probably.

Q. And, during the conversation, did he tell you that Mr. Havens had taken part in the conspiracy?

A. During the onset of the conversation he did not say Mr. Havens was on the flight with him, [49] but he did say that Mr. Havens was the intended recipient in the Ft. Wayne area, an indication with the conversation with him, was that the—

MR. McCAIN: Judge, we are going to object as to what an indication of conversation is.

THE COURT: Sustained. What did he say?

THE WITNESS: He stated that he was supposed to go to Ft. Wayne, Indiana, and deliver the cocaine to Mr. Havens.

BY MR. CULVERHOUSE:

Q. And, at the end of the conversation, or during the progress of it, did he tell you that Mr. Havens was on the plane with him?

A. Right. The subsequent conversation, then, he advised me that he had lied to me about the initial part of Mr. Havens not traveling with him, that Mr. Havens did, in fact, travel with him on the same flight, and that's—at which time I had Agent Martinez attempt to locate Mr. Havens in the airport area.

Q. And, did you see Mr. Havens that day at the Miami International Airport?

A. Later that afternoon, yes, sir.

* * * * *

[CHARLES MARTINEZ—DIRECT EXAMINATION]

[53] BY MR. MILLER:

Q. Now, did you determine, or did you find Mr. Havens in the airport on that day?

A. Yes, I did.

Q. And, did you approach Mr. Havens?

A. I did.

Q. What, if anything, happened when you approached him?

A. I asked him if he was Mr. Havens, after identifying myself, and the gentleman said he was Mr. Havens.

I then asked him if he would speak with me for a moment in which he stated, "Surely."

Mr. Havens and myself and a Customs Patrol Officer then proceeded to a Customs office at the airport where I had an occasion to interview Mr. Havens.

Q. Now, do you recognize Mr. Havens here in court today?

A. Yes, I do.

[54] Q. Will you please point him out.

A. It's the gentleman with the grey suit sitting at the defense table.

MR. MILLER: Let the record please indicate that the witness has identified the defendant.

THE COURT: All right.

BY MR. MILLER:

Q. Now, you stated you had a conversation with Mr. Havens?

A. Yes, I did.

Q. Now, previous to that, did you advise him of his rights?

A. Yes, I did.

Q. Tell us what happened.

A. As we entered the Customs office—I immediately advised Mr. Havens of his rights, and I began to ask him questions—Mr. Havens stated that he had traveled to Lima, Peru, with Mr. McLeroth and that he had known Mr. McLeroth from Ft. Wayne, Indiana where he was

a friend and also acted for Mr. McLeroth's behalf—on behalf of Mr. McLeroth as an attorney for him on several matters in Indiana.

Mr. Havens stated that he had traveled to Lima, Peru, with Mr. McLeroth; the purpose of the [55] trip was to generate interest in a medical supply business in Peru.

In an attempt to do this, Mr. Havens stated he had met with a gentleman by the name of Augusto Gonzales which Mr. Havens stated was an employee of an insurance company in Lima, Peru.

He stated that he—after making telephone calls, did meet with Augusto Gonzales in Lima and did subsequently go to Augusto Gonzales' apartment in Lima.

Mr. Havens stated that he did not know the nature of Mr. McLeroth's business in Lima.

He went on to say that he had made two previous trips with Mr. McLeroth, at which time I stated that it seemed unusual to me that after making three business trips to Lima with Mr. McLeroth, a long time friend and client, that he would not have discussed his business transactions or business deals.

Mr. Havens then stated that he had assumed Mr. McLeroth was in custody and he chose not to make any statements about Mr. McLeroth's business at that time.

Q. Did Mr. Havens tell you where he stayed in Lima, Peru?

[56] A. Yes, he did.

Mr. Havens provided me with the name of the hotel and stated that he stayed there with Mr. McLeroff [sic] and, in fact, that's what he stated.

Q. Did you have occasion to receive Mr. Havens' airline ticket on that date?

A. Yes, sir, I did.

MR. MILLER: Your Honor, may I approach the witness?

THE COURT: Yes, sir.

BY MR. MILLER:

Q. Agent Martinez, this is Government's Exhibit No. 7. I ask if you can look at that and identify that, please.

A. Yes, I can.

Q. And, would you please tell the jury what that is?
A. It's airline tickets which I obtained from Mr. Havens the day that I interviewed him.
Q. And, does it indicate where—it indicates air travel from Indiana to Lima and return.
MR. MILLER: I offer that in Evidence Your Honor.
MR. McCAIN: No objection.

* * * * *

[65] MR. CULVERHOUSE: The government calls John McLeroth.

Thereupon:

JOHN KENNETH McLEROTH

was called as a witness on behalf of the Government who, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CULVERHOUSE:

Q. The first thing I would like you to do is to tell me how to pronounce your name.
A. The name is pronounced McLeroth.
Q. McLeroth?
A. McLeroth.
Q. Mr. McLeroth, would you tell the jury where you live presently?
A. I live in Ft. Wayne, Indiana, at 3030 Rockwood Drive.
Q. And, how long have you lived in Ft. Wayne, Indiana?
A. Approximately fifteen years.
Q. Mr. McLeroth, would you give the jury a brief summary of your educational background?
[66] A. I'm an attorney educated at the law school at De Paul University in the city of Chicago, Illinois.
Q. When did you graduate from law school?
A. In 1956.

Q. Once you left law school in 1956, were you admitted to any bars in any state?
A. Yes, I was admitted to the Illinois Bar.
Q. And, did you practice law after being admitted to the Bar?
A. I practiced law for corporations in Chicago.
Q. Would you name the corporation and the period of time.
A. Yes, Montgomery and Ward and Company for approximately four or five years.
Q. What type of law did you practice there?
A. It was essentially contract law; drafting of contracts.
Q. And the next company you worked for?
A. Then Motorola.

* * * * *

[88] BY MR. CULVERHOUSE:

Q. Continue.
A. I then took—having been told by Augusto that it should be ready on Saturday—I was in an awful hurry to get back home—I then took my ticket and Mr. Havens' ticket over to the Braniff ticket office and changed our reservations, or at least booked firm reservations for, as I recall, for Saturday. It was like Saturday night the plane left.

It left 11:00 or 12:00 p.m. or 12:00 midnight, as I recall the outgoing flight.

On Saturday, during the day, on that Saturday, the Saturday that we left, Mr. Havens left the room—his hotel room.

I waited in his hotel room. He returned with Augusto.

Augusto was then carrying an airline bag, and from the airline bag, he, Augusto, extracted five bags which were—they were double-bagged—two bags, dark grey or dark blue in color, as I recall.

[89] And these five bags, according to Augusto, contained just under four pounds of cocaine, and also, according to Augusto, I believe I recall him saying:

"It's good stuff."

Q. Now, stop at this point and describe to the jurors how old Augusto is.

A. Augusto is in his mid-twenties. 25, or 26, or 27, I would say.

Q. And when you met him the first time, did he have any facial hair, a beard or a mustache?

A. Yes. He had a beard. Uh-huh. He had a facial—this kind of a beard.

Q. And, did Augusto tell you how he was employed, if at all?

A. I don't believe he did on that occasion.

Q. Now, continue on from the point where you stated that Augusto brought the bag containing five double-wrapped plastic bags.

A. He took these bags from his airline bag, and we then proceeded to position the bags on my body; two here, two in the lower abdomen and one in the small of the back.

And this was kind of a three man [90] operation between me and Mr. Havens and Augusto to position the bags and then tape—holding the bags in place and getting the tape around and then secure the tape—and have the tape secured binding the bags to me.

And we did this—as I recall, it was about three hours of wrapping and unwrapping and trying and failing to get the right security in the right contour and the right form to the thing.

Q. What was Mr. Havens doing at this time?

A. Well, he was helping Augusto do the wrapping around.

One would have to hold where the one Ace bandage would end, and start wrapping another one around, and then putting tape on and the final act, Mr. Havens to secure the ends of the tapes, would—so it wouldn't pull lose, the ends of the Ace bandages, I mean, would sew—were sewn around various points where the Ace bandages met, so there would be no break.

Q. Are these the Ace bandages that you took down there that you picked up from Mr. Havens' son?

A. Uh-huh.

* * * * *

[101] And I was given at that time $5500 by Mr. Havens in his driveway of his house.

Q. In what form of pay?

A. Cash.

Q. What did you do with the money?

A. Well, I put it in the—as I recall, the bank and then went on to proceed with the graduation of my daughter and I was able to write a current check against that deposit for part of the tuition owed.

There was still more owed.

But I gave them enough money that they graduated her.

So, it was a close call there.

And that's why I remember the girlfriend had returned prior—shortly before the end of May, '77.

Q. So, up to this point, the end of May, 1977, of the $15,000 that was owed to you, you had received a $25000 payment and a $5500 payment?

A. I remember distinctly the fifty-five, because it was connected with the graduation. No other money was paid during that period of time, additional monies, prior to that; that is, during the month of May, [102] and those were relatively small increments, $1,000, $1500, roughly, in terms of the $12,500 owed, but my understanding was that that was being—that was return from money—that was the money from the distribution—they said up north, or in Michigan, of some of the cocaine that they had rinsed and even some that had not been rinsed.

* * * * *

[104] BY MR. CULVERHOUSE:

Q. Mr. McLeroth, let's go back to approximately the end of May, 1977, after you had received the $5500 payment which you used for your daughter's tuition and graduation.

After that time, sir, approximately when would be the next time you saw Mr. Havens?

This would be after you received the $5500 pay.

A. Well, I saw him on other matters incident to creditor problems, and so on.

[105] Are you referring now to matters of importation of cocaine or whatever?

Q. Will you describe what matters were involved in his continuing legal and professional relation with you?

A. Well, again, we were attempting to hold off creditors, or payments thereto, until my visits in Ecuador or the Chilean Central Bank loan had been completed.

I recall that in June—I believe it was in June of 1977—Mr. Havens told me that he had taken a Lufthansa flight from New York to Lima and back again within a 24 or 36 hour period.

That trip was completed.

And, at that time, he had—he said he had returned from Lima to New York and then, instead of coming back to Ft. Wayne, had gone on to the Middle East on different business and—my recall is that at some point in June, he returned from this trip, told me that he had made the Lima trip on the Lufthansa Airline, had gone, had seen Augusto again in Lima; Augusto, he reported, was very apprehensive and was not about to provide any further cocaine source at that time.

* * * * *

[111] BY MR. CULVERHOUSE:

Q. By the end of the summer of 1977, how much money had been paid by Mr. Havens?

A. The total twelve thousand-five, or the total fifteen, if you include the $2,500 advance prior thereto—prior to the trip.

Q. Did you go to South America with Mr. Havens in September of 1977?

A. Yes. Approximately September 6th, 1977, we went to Lima, Peru together.

Q. Did you have a discussion about going prior to your leaving the United States?

A. Well—yes.

On—well—again, now, Augusto had returned to Lima, Peru from the United States having spent six weeks of his vacation with—Mr. Havens said was with this Rick

fellow—and according to Mr. Havens, they had sent him back—and the expression I think Mr. Havens used was:

"all jacked up,"

to begin supplying cocaine again.

So, Augusto was back at the end of August, and our trip was scheduled for—as I say, for September 6th, and that's when we went to Lima.

[112] I went to—my wife drove me to Mr. Havens' house, and when I—when I arrived, Mr. Havens told me that:

> "Rick and Chris are in the cabana finishing the shirt and putting the money into the shirt."

And this was a—this refers to a now instead of Ace bandage technique, this was a body shirt—not a body shirt, but a tee shirt with pockets sewn in which would hold a smaller number—a larger number of bags, but smaller bags, and was supposed to be a better contour deal.

And so, as I arrived at the Havens residence, as I said, he said:

> "Rick and Chris are in the cabana finishing sewing the money in the shirt."

It was now approximately quarter to four, or twenty till four, and we had a 4:18 flight to catch.

And I don't recall this now—either Mr. Havens went to the cabana and brought the shirt back to me, or Chris Havens came—wheeled it out and gave it to me—one way or the other, I received the shirt from one of the two of them, from the cabana.

[113] I put it on. This now had in it the buy money and also the bags, empty, which were to be used to hold the cocaine when we arrived and received cocaine in Lima. And these were the pockets of these shirts, the bags and the money.

And on the way to the airport, I asked Christ [sic] how much money was in the shirt.

And he said he didn't know.

So, on the way to the airport, Mr. Havens said to me, or said to Chris, to assure Rick that we wouldn't leave the hotel with the money until Augusto had arrived and had received the money and was on his way to obtain more cocaine.

Q. And, did you then fly to Peru?

A. Yes.

Q. Did you fly alone or with Mr. Havens?

A. No, we flew together.

Q. Do you recall—

A. At the ticket counter in Ft. Wayne, Indiana, Mr. Havens put his ticket on his credit card and he paid for mine with cash.

Q. Where did you stay when you arrived in Peru?

A. At this time we stayed at the Caesar [114] Hotel.

Caesar, it is pronounced. In Lima. And that was on the recommendation, according to Mr. Havens, of Mr.—well, of Aggusto who said it was a nicer hotel, it was away from the main part of town, it was nicer district and it was a safer hotel.

Q. When you got to the Caesar Hotel, did you meet with Augusto?

A. Augusto arrived—my recollection is—approximately 11:00 o'clock that evening—the evening following our arrival that morning.

Q. And, what conversations transpired?

A. Well—no, I'm sorry, Mr. Culverhouse.

I'm thinking now of the third trip.

On this second trip Augusto did not arrive. It was perhaps two or three days before we saw him.

And he said at that time, as he came into—we were in Mr. Havens' room—as he came into the room, he said:

> "This may be a vacation trip for you, because my source got popped."

And he meant, "arrested."

Q. What did you do from the time you got [115] to the hotel after you had flown in, until Augusto came two or three days later?

A. Well, Mr. Havens had made attempts to locate him including going to the—Augusto's family ran a cock-

fighting arena business in Lima, and he, Augusto, was often there, had often been there and so Mr. Havens went to see if he could find him.

Q. What did you do during that time?

A. I just waited at the hotel.

And I believe Mr. Havens—well, I don't know—he said he made several telephone calls but couldn't reach him.

Q. So, after Augusto—

A. Now, Augusto—I'm sorry.

Q. After Augusto came and told you that this may be a vacation trip, what then took place?

A. He said, however, that there was a possible connection he had, and he said he was trying to run this fellow down and meet with him.

He said he was an older man—Augusto said he was an older man—and he was trying to set up a connection with this fellow.

Now, we were—at this trip, we were there maybe—it was a long one—this was a ten day—we [116] were there ten days anyway, waiting for the availability of cocaine.

And at some point, after Augusto arrived and said his connection had been popped and that was all, and it would probably be a vacation, but he would see what he could do. At this point, Mr. Havens suggested that Augusto have a fellow—I know only as Jaime—the name I only know as Jaime—work with Augusto and try to develop that unavailability on that trip.

And so, August [sic] said he would talk to Jaime about that, and they were now, so far as we understood, both working on the problem of acquiring cocaine for our return.

But it was not forthcoming.

Q. Did you fly back, then, empty-handed?

A. Yes. Prior to the flight—prior to departing, Augusto said he had then just made contact with the alternate source, this older man, but he said it would take five or ten days, so there's no point in us staying any longer.

And we returned with the idea in mind that ten days down the line or so, he would have a connection set up again.

[117] Q. So, you went back to Ft. Wayne?

A. Right.

Q. Did there come a time when you went back down to Lima, Peru?

A. Yes.

Q. When was this?

A. Towards the end of the month, on or about the 26th of September.

I recall, my best recollection, it was a Monday.

And Mr. Havens had given me $750 to buy the ticket and to cover expenses for a couple of days and we left—I left that afternoon.

Mr. Havens said that he waited to receive from Rick the buy money.

And he, at one point, said that Rick came running through the airport like O. J. Simpson in the commercial, with the envelope of money, and it was a last minute thing, so I got out myself and then he got out with the money on his flight.

And, from my understanding from what he said, was that he went through Detroit, and I went through Atlanta, so we left at different times, but on the same day.

[118] Q. Thank you. When did you get to Peru?

A. The following morning.

Q. And, where did you go?

A. The Caesar Hotel. I went there—I'm alone—I'm arriving alone at the Caesar.

Q. Did you meet Mr. Havens at the hotel?

A. Yes. When I was—I was in my room a short time, the telephone rang, and he was already at the hotel.

Q. Tell the jury what happened on this third and final trip.

A. Mr. Havens told me with reference to his flight over that he was carrying the buy money in the pockets of his suit, and he became apprehensive. He looked strange going into the country with bulky pockets, and he said he made so many trips to the bathroom in the airplane that the crew became very suspicious.

He said they were—he was back and forth, and they began noticing him too much, so he asked for a couple of aspirin to explain this all the way, he was not feeling well.

And at 11:00 o'clock—11:00 that evening, I believe, Augusto arrived.

[119] Q. And, where were you staying then?

A. Again, at the Caesar Hotel.

Q. Were you and Mr. Havens sharing a room or in separate rooms?

A. No, we each have our separate room.

Q. What happened when Augusto came?

A. He took the buy money, which was my understanding, was approximately $15,000.

As best I recall, he put it in the pockets of his suit, his clothes, and left.

I recall that this was—my best recollection, it was not the boots this time, it was just put in the pocket of his clothes and left.

And this is Tuesday night.

And so, on Friday, the Friday of that week, late in the evening, reasonably late in the evening, we are now in Augusto's—he is now living in an apartment in the building, numbered 156, a short walk from the hotel, and he's living in Apartment 801, he's subleasing it.

Mr. Havens is there and I am there, and Augusto is there and the telephone rang, and Augusto returned from the telephone to say that his connection had called and had, he said, he said:

[120] "He has a button for me."

And he says:

"That means either a sample or all of it."

But he then left.

"He," Augusto, then left the apartment and—

Q. Did he have buy money at this time?

A. Oh, yes. He had had the buy money since we arrived.

Q. Who turned it over to him?

A. Mr. Havens did.

Q. And this was $15,000?

A. It was approximately—I didn't count it—I was told it was approximately 15,000. $15,600 is the figure I remember Mr. Havens saying.

Q. Continue after Augusto left to purchase this button or—

A. To pick up the button. Okay.

He returned, I'd say, in an hour, and he returned with a leather-tooled dark brown carrying case, which he said belonged to the man who was his source on this trip.

And, inside the carrying case was a [121] plastic bag, and inside the plastic bag this time a large loose bag, was a loose pile of what he said was cocaine.

And, initially, Augusto took a knife and went through the pile and was—seemed to be seeking out good from bad.

I mean, he'd find crystallized substances and would say:

"This is very, very good," and then, a flatter powder, and say:

"Not so good," and so on.

So, in any event, that particular portion, which was not the total amount, which had been agreed to be delivered for that money, the portion brought on Friday night was bagged.

Augusto would use a matchbook cover, and the small little bags that had been brought the prior trip in the shirt, were loaded, and then a sealing operation—the bags were opened only on one end and then a sealing operation went on in that—at this point now, we have arriving Augusto's brother, Sergio, and it's a Rube Goldberg type of operation in that when the bag is filled almost to the top to [122] leave enough room to seal, and Augusto's brother, Sergio, would light a large candle and then the candle would be applied by Augusto to fuse the bag together, and then I would pull the edge of that bag level with the table and Mr. Havens would apply a cardboard to seal it.

So, it was kind of a manual process of putting the cocaine into these now very small bags, which, in turn, were fitted into the pockets of the shirt.

And we worked quite late. And bagged that amount of cocaine.

And the following day, approximately, as I recall 1:00 o'clock in the afternoon, we met Augusto in front of his apartment again and this time he has the balance of the cocaine and we bring that up to the apartment and again the bagging process.

And now we have all the bags filled. And, again, it's the same kind of operation; heat is applied and August [sic] is applying heat, and I'm lining up the edges and Mr. Havens is putting a cardboard to seal the edges.

So, now, we have all of the bags.

Now, Mr. Havens observed that the odor—[123] there was an odor coming from the bags.

Q. Go ahead.

A. Mr. Havens observed that there was an odor coming from the bags. And he would bend down and sniff it, and he said that the odor seemed to be the same kind of smell that permeated his house when the first delivery was drying there; the merchandise—the cocaine that had been rinsed before—the defective stuff.

And so, Augusto withdrew from the closet a large cleaning bag and proceeded to put a second bag over the initial bags; that is, he made a double bag situation to cut down on what seemed to be an ether-like smell leaking through the single bags.

And, at this point—well, this is Saturday—and I believe we left on Saturday night—

Q. What did you wear when you left?

A. Well, in the second trip, the September 6th, I should say, trip, to Lima, and then Mr. Havens brought down a body stocking which is a ballet-type elastic and also a heavy-duty supporter.

Now—so the tee shirt with the pockets and bags, I put on and there, again, was this sewing, only this time Mr. Havens was sewing the tops of the [124] pockets up of the shirt so as to—so that the bags wouldn't bounce out, or whatever.

He was sewing those, and then I put over that the body stocking which flattened the shirt against my torso and then the heavy supporter which covered the lower part of it and then the shirt, and tie and suit, and we took off.

We went to the airport directly, as I recall—no, I just went back for our bags—in any event, it was that night—it was the same night of the day, the 1:00 o'clock meeting where Augusto brought the cocaine that we left and arrived Sunday, I believe, October 2nd, into Miami International Airport.

Q. What happened once you got into the Miami International Airport?

A. Well, unlike the first trip where Mr. Havens would remind me to stand straight or whatever, we didn't speak to each other, we just kept our distance, and I passed through the baggage check and was signed out of the regular luggage check. I mean to say, by the inspectors, and I was on my way to hand the ticket to the girl at the door and out when I was stopped by a Customs Inspector who asked me, was I wearing a back brace. [125] At this point, I said: "No, I wasn't wearing a back brace," and—

MR. McCAIN: Judge, we're going to object unless a proper predicate is laid and we're within the presence of the defendant, this conversation.

THE COURT: Overruled. Go ahead.

THE WITNESS: So, I said I wasn't wearing a back brace, as I so stated, and I went to a room, and there submitted to a search, and the body shirt was found, and the contents, as I understand, were tested on the spot in my presence and turned the solution red—I don't recall, but I was placed under arrest by Customs, and I did not then again leave and go back out to the main airport area.

I was held by Customs until the Drug Enforcement Agency personnel arrived.

BY MR. CULVERHOUSE:

Q. Did you then have a conversation with Agent Sharett of the Drug Enforcement Administration?

A. Yes, I did.

Q. When you first talked to him, did you tell him about Mr. Havens?

A. I was asked—I don't recall the conversation with Mr. Sharett precisely—I was asked by [126] Customs—by the first people at Customs, before Mr. Sharett arrived, I was asked whether anyone was traveling with me.

I answered, "No, I had"—and I have never been arrested before—I was in a room in handcuffs—I had no idea when I would be out of there—and I had a naive and trusting family in Ft. Wayne—

MR. McCAIN: Judge, we are going to object to the editorial comment. He can testify as to what he said and what happened—

THE COURT: Okay. Sustained.

THE WITNESS: So, feeling that—

BY MR. CULVERHOUSE:

Q. Excuse me.

THE COURT: Your next question.

BY MR. CULVERHOUSE:

Q When you first talked with Agent Sharett, did you tell him or the Customs agent, did you tell them that you were traveling alone?

A. Well, when I first talked with—

Q. This just requires a yes or no.

A. Yes. With the Customs agent, that's correct.

Q. When you flew from Peru on October the [127] 2nd to Miami, was Mr. Havens on the airplane with you?

A. Yes, he was.

Q. Where were you sitting? First class or tourist?

A. Tourist.

Q. Where was Mr. Havens sitting?

A. First class.

Q. Subsequently in the conversation with DEA, did you tell them about Mr. Havens and his role in this—

A. Yes, I did.

Q. —conspiracy?

A. Yes, I did.

Q. That day, were you placed in jail with Mr. Havens?
A. Yes, I was.

* * * * *

[340] Thereupon:

J. LEE HAVENS

the Defendant herein, was called as a witness on his own behalf who, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McCAIN:

Q. Would you please state your name.
A. My name is J. Lee Havens.
Q. And, where do you live?
A. I live in Ft. Wayne, Indiana.
Q. And, would you tell the jury what your profession is?
A. I'm a lawyer.
Q. And, do you have any specialty?
A. Yes, I do. I am in general practice, but there are a couple of areas that I do specialize in. Real estate work is one; and another is corporation [341] work. Small corporations.
Q. Do you practice generally any in the area of criminal law?
A. No, I do not.
Q. Now, you are, as you understand, a co-defendant in the case at bar, right?
A. Yes, I am.
Q. Now, in Count I of the indictment, you have been charged with conspiring and combining and agreeing with McLeroth, Vigil, to commit certain crimes against the government; namely, a conspiracy to import cocaine into the United States.

And I will ask you whether or not you did, in fact, conspire, agree and combine with them to do that.
A. No, I did not.

Q. All right. Now, you have also been charged with knowingly and intentionally and in fact importing cocaine into the United States.

And, I will ask you whether or not you did that.
A. No, I did not do that.
Q. You have also been charged with knowingly and intentionally possessing with intent to [342] distribute cocaine into the United States.

I will ask you whether or not you are guilty of that.
A. I am not guilty of that.
Q. Now, I want to ask you first of all whether or not you know Augusto Gonzales Vigil.
A. Yes, I do.
Q. And, I'll ask you whether or not in the year 1977 you had occasion to see him.
A. Yes, I did. I saw him on several occasions.
Q. How can you recall—and tell the jury—when would have been the first time in 1977 that you saw Augusto?
A. In 1977, the first time I saw him was in Lima, Peru.

* * * * *

[348] Q. All right. During that conversation, then, were any arrangements additionally made with regard to—specifically to the trip to Lima, Peru?
A. I think not.
Q. Did you have any conversations with Mr. McLeroth before leaving the United States for Peru?
A. Oh, I'm sure we did. You know, we are planning a trip of some magnitude. I've always enjoyed traveling and—at least until recently—so, I'm sure that we did talk about what to wear, what to take, that sort of thing, but I can't remember any specific conversation about it.
Q. During the course of all of these conversations, while in the United States and before leaving for Lima, Peru, did you ever discuss with him the purchase and import of cocaine?
A. No, sir, I did not.
Q. All right. And, did he ever advise you that he was going to engage in smuggling cocaine into the United States?
[349] A. No, he did not.

Q. All right. Now, when you went to Peru on this first visit, will you state to the jury, if you can recall, where you left from and the airline and how you got down to Peru.

A. Well, I'm not sure I remember the airline. We had originally planned to fly down together.

Rather at the last moment, like a few days before, John said that he had some other business—and I think it was Chicago that he had to go to—but I'm not sure about that—and that he'd be down later.

And so sometime in the latter part of April, I flew to Miami. I—we don't have too big a choice of airlines to fly in—out of the Ft. Wayne—it's sort of off the beaten path—I can't recall whether I took Delta or United—it had to have been one of those, because those are the only two ways that you can fly—I believe I took a Braniff flight out of Miami.

Q. To Lima?

A. Yes. I know it left late at night and got in around breakfast time.

Q. Did Mr. McLeroth accompany you on that [350] flight?

A. No, he did not.

Q. So, you went alone?

A. Yes.

Q. And you have already related, of course, the business that you conducted with Augusto while there on that first visit.

And I will ask you now whether or not you saw Mr. McLeroth in Lima, Peru on that first visit.

A. Yes, I did. I saw him quite a bit, as a matter of fact.

Q. Would you state to the jury where you saw him and under what circumstances you saw him.

A. Well, first of all, he had told me, when he planned to come in, to Lima, and I was staying at the Hotel Crillon, and—I don't recall how I decided to stay there—it wasn't a particularly nice hotel—I think I had gotten the name out of a travel guide or something. It—I didn't know where it was or anything.

I—fortunately, I got a taxi driver who could understand what I said, which I was surprised at, and so, I went to the Hotel Crillon and I got a—I reserved a room for John when I got there because he [351] said he was coming in, I think, in two or three days, whatever he told me.

I said, "There's going to be a man arriving at that time, and he's going to be taking a room, a single room."

Q. All right. Now, did you return on the same flight?

A. Yes. I'm sure that—I'm sure that I did.

Q. And, I'll ask you now, whether or not on that occasion, you imported any cocaine back into the United States?

A. No, sir, I did not.

Q. And do you know whether or not Mr. McLeroth did?

A. No, I do not. I consider it unlikely, but I don't know.

Q. All right. Now, you've testified earlier there were some other occasions that you went to Lima, Peru, and I will ask you now about the second time that you went down there, and if you can tell the jury about when that second trip would have been, to Lima, Peru.

A. Yes, I can tell you approximately. [352] It was the first part of June. In '77.

Q. And, did you have any conversation with Mr. McLeroth concerning the second trip?

A. No, I did not. I—well, I didn't prior to the trip. That I recall.

Q. Did he accompany you on that trip?

A. No, he did not.

Q. Will you tell the jury whether or not you ever met him while you were in Lima, Peru, on that second trip.

A. No, I did not. To my knowledge he wasn't there.

* * * * *

[375] Q. All right. Now, before you returned to the United States, did you engage in purchasing cocaine

with money which you had or Mr. McLeroth in paying money to Augusto for cocaine?

A. No. No, I didn't do nothing of that sort.

Q. And you heard Mr. McLeroth testify earlier as to something to the effect that this material was taped or draped around his body and so on, you heard that testimony?

A. Yes, I did.

Q. Did you ever engage in that kind of activity with Mr. McLeroth and Augusto or Mr. McLeroth and anyone else on that fourth visit to Lima, Peru?

A. I did not.

Q. Now, this is the fourth visit to Peru, on the return, was the time that Mr. McLeroth was stopped and arrested for the possession and so forth, of cocaine.

[376] I will ask you first whether or not you knew that he, McLeroth, was bringing cocaine back into the United States from Lima, Peru.

A. No. I did not.

Q. Now, when you returned from Lima, Peru, into the United States, did you come into the Miami International Airport?

A. Yes, I did.

Q. And I will ask you whether or not you proceeded through Customs. You.

A. Yes, I did.

Q. I will ask you whether or not you were arrested with cocaine on your body or luggage or anywhere else.

A No, I was not.

Q. Subsequent or following the arrest of Mr. McLeroth, as previously testified by the Customs agents, on that same day, later in the day, were you arrested?

A. Yes, I was.

Q. And the charges made against you which are now pending in this court.

A. That's correct.

* * * * *

[383] BY MR. CULVERHOUSE:

Q. Take your time and examine that, sir.

A. All right.

Q. What size is that shirt?

A. A 38-40.

Q. What size do you wear, sir?

A. A 46. 44, sometimes, 46, sometimes.

Q. This would not be your shirt?

A. No, it would not.

Q. Now, on direct examination, sir, you testified that on the fourth trip you had absolutely nothing to do with the wrapping of any bandages or tee shirts or anything involving Mr. McLeroth; is that correct?

A. I don't—I said I had nothing to do with any wrapping or bandages or anything, yes. I had nothing to do with anything with McLeroth in connection with this cocaine matter.

Q. Now, before today, have you ever seen this tee shirt?

A. Yes, I have.

Q. When was that?

A. Well, I saw a photograph of it.

Q. But, you have never seen that in person. [384] Never seen it on Mr. McLeroth.

A. No. It might have been shown to me at the airport when I was arrested, but I don't think so.

I think that—I think that—the only time I have seen this or what appears to be this, would have been a photograph. I think there was a polaroid photograph taken; showed Mr. McLeroth standing rather erect and a shirt appearing like this on him and it had packages sticking out of the pockets.

Q. And your testimony is that you had nothing to do with the sewing of the cotton swatches to make pockets on that tee shirt?

A. Absolutely not.

Q. Sir, when you came through Customs, the Miami International Airport, on October 2, 1977, did you have in your suitcase Size 38-40 medium tee shirts?

MR. McCAIN: May we approach the Bench?

THE COURT: All right. Ladies and gentlemen, you can step into the jury room, if you will, please, while we take this matter up.

Thank you.

[Jury excused.]

[385] THE COURT: Mr. Havens, you may step down, if you don't mind, and step outside for just a minute while we go over this.

THE WITNESS: Yes.

THE COURT: We will have these outside the presence of the witness.

MR. McCAIN: All right.

[Thereupon, the witness was temporarily excused from the witness stand.]

THE COURT: All right, Mr. McCain.

MR. McCAIN: This was the subject matter of a motion to suppress, which was granted as to the contents of a suitcase and which I believe I made inquiry of just now to which question I objected.

On direct examination, I asked Mr. Havens specifically if he had any contraband, and cocaine found on him, or his person, or anywhere else, which does not open the door to tee shirts or anything of that kind.

MR. CULVERHOUSE: He asked if he had any wrappings around him or tee shirts on the motion, and that the whole denial—

MR. McCAIN: Around him.

[386] MR. CULVERHOUSE: Around him. Or have anything to do with it. And he has denied it from the stand.

Oregon vs. Haas, a Supreme Court case, the case of Harris vs. New York, in a case in which I participated as the prosecutor, United States of America vs. Leiberman, all support the proposition that this is a proper question for impeachment.

If he denies it, I will be permitted to bring in rebuttal testimony.

THE COURT: May I ask what item was suppressed at the suppression hearing before the Magistrate?

MR. CULVERHOUSE: Two tee shirts, size 38-40, medium, carried in the suitcase of Mr. Havens and in addition, three hotel receipts, two in the name of Mr. Havens and one in the name of Mr. McLeroth, with a Diners Club receipt of Mr. Havens paying for Mr. McLeroth's bill.

MR. McCAIN: That's correct.

THE COURT: Now—

MR. CULVERHOUSE: And one of the tee shirts—excuse me—there's swatches of cloth cut out which are similar to the swatches sewn on this tee [387] shirt.

THE COURT: Well, let me see that tee shirt.

While he is getting that, what is the significance of the bill that was paid by Mr. Havens, who, the receipts for which were found in Havens' suitcase?

MR. CULVERHOUSE: The only significance I can see, of course, I have not brought it out—

THE COURT: You just talked about it.

MR. CULVERHOUSE: Yes. I don't intend to get into that. The only thing it shows the connection between Mr. Havens and Mr. McLeroth, that Mr. Havens paid for three days at the hotel of Mr. McLeroth.

Mr. Havens testified to that. Mr. McLeroth testified to that. I don't intend to introduce those. I don't intend to introduce this tee shirt, if there's an affirmance that it's there.

Do you want to open that up to show the swatches?

MR. McCAIN: Let me ask if I ask you this question—

MR. MILLER: Your Honor, if you take it out, you can see it's been cut in the rear.

[388] THE COURT: Let me get the Clerk in here.

MR. CULVERHOUSE: Is Agent Martinez out there?

Bring him in. He can tell us which tee shirt has the holes cut out of it.

THE COURT: Thank you. (Examining article.)

MR. MILLER: We have it opened.

THE COURT: Is this the one with the swatches cut out that you are talking about?

MR. MILLER: Yes.

MR. McCAIN: We have already got it.

MR. CULVERHOUSE: All right.

THE COURT: Agent Martinez, is this the shirt that was found in Mr. Havens' luggage? It's been marked Exhibit D in your markings. It was just handed to me by counsel.

Is that what you're referring to with the swatches cut out?

Is that what you're talking about?

AGENT MARTINEZ: Yes, sir, I believe there should be a sticker on it.

THE COURT: Yes, there are stickers [389] on it. But this is what you are referring to that you want to ask him about?

MR. CULVERHOUSE: Yes, sir.

THE COURT: It is your contention that these swatches were sewn in the other—

MR. CULVERHOUSE: Yes, sir, it is the contention that it is Mr. McLeroth's tee shirt, and—

THE COURT: You mean Mr. Havens' tee shirt.

MR. CULVERHOUSE: Mr. McLeroth's tee shirt in Mr. Havens' bag.

THE COURT: Okay. And you want to ask him about that.

MR. CULVERHOUSE: Yes, sir.

THE COURT: Your objection is—

MR. McCAIN: Our objection is, Judge, this was the subject on the motion to suppress which we had a hearing on in which there was a ruling, and which it was suppressed and there's a written order on that on which we have relied coming into this trial.

THE COURT: Well, of course, it is the law that—

MR. McCAIN: We would make the same argument that we made at that time in which the argument [390] is included in the order.

THE COURT: Well, I have reviewed the Magistrate's order which suppressed the evidence of the items that were seized from the suitcases.

MR. McCAIN: Yes, sir.

THE COURT: It did not suppress the items or other matters that were seized from him personally.

MR. McCAIN: That's correct. We are not concerned about that.

THE COURT: But a motion to suppress, the granting of a motion to suppress does not mean that the evidence cannot be used for any purpose. There is one limited area in which it can be used; and that is to impeach a witness who takes a contrary position.

MR. McCAIN: I understand.

THE COURT: If he does later in the trial.

Now, here, the suggestion is that Mr. Havens, in denying that he had anything to do with the—

MR. McCAIN: Importation.

THE COURT: —importation and [391] specifically in denying that he had anything to do with the wrapping of Mr. McLeroth's body with the Ace bandages or with the dressing of Mr. McLeroth with the tee shirt with the pockets in it that held the cocaine; that, in denying that, that counsel is now entitled to offer into—and in saying that he only wears Size 44-46, or sometimes 44 tee shirts, the government wants to offer this other tee shirt in evidence which appear to be linked or may be linked to the tee shirt that contained the contraband with the patches sewn on it that was found in Mr. Havens' suitcase.

MR. CULVERHOUSE: I would only be allowed to do that if he denied bringing it in and it is his. As I understand it.

Otherwise—

THE COURT: He has denied having anything to do with the cocaine.

He has denied having anything to do with Mr. McLeroth's wrappings or dressing or anything to do with the conspiracy where McLeroth brought the cocaine into the United States.

MR. McCAIN: But, to rule that that would be admissible merely because of that general [392] denial, Your Honor, amounts to a curious victory on the motion to suppress, because by putting him on the witness stand, I don't have him deny the charge, then the jury—then he can get up in final argument, or the jury could assume then that he did do these things because he didn't deny them.

THE COURT: No, the government can't argue that the man failed to take the witness stand. In fact, the jury will be instructed—

MR. McCAIN: He took the witness stand, you see, but—

THE COURT: I know.

MR. McCAIN: We specifically said that we did not import cocaine. Therefore, we are being put in an impossible position of taking the witness stand and then not saying anything about the allegation.

THE COURT: Well, I understand—

MR. McCAIN: You have got us caught between a rock and a hard place.

THE COURT: Well, I haven't, the Supreme Court of the United States has.

MR. McCAIN: I didn't mean a personal attack on the Court.

THE COURT: No, I understand.

[393] MR. McCAIN: So, we are in between a rock and a hard place, if I put him on the stand, Your Honor, and I don't ask him anything about whether or not he participated in the importation of cocaine, whether or not he participated in a conspiracy in Lima, Peru, to bring this back in here, then the jury is going to sit there and think:

"That guy didn't even deny these charges."

Then, on the other hand, if I do deny, then the government comes in, as they have done now, and they say:

"Well, now, we are entitled to put this tee shirt in,"

and that, and all these items that were in the luggage that were suppressed.

And, I'm trying to figure out, I've got to deny these things, otherwise we might not as well have a trial. We might as well just plead guilty.

MR. CULVERHOUSE: The Supreme Court said in New York vs. Harris:

> "The shield provided by Miranda cannot be perverted into a license to [394] use perjury by way of defense free from risk and confrontation with prior inconsistent utterances."

And this is an identical situation.

MR. McCAIN: It hasn't anything to do with perjury.

THE COURT: Well, that's what he's getting at. I mean—well, they used the strong language. They use it in—Justice Blackmun uses it in Oregon vs. Haas.

MR. McCAIN: I know that.

THE COURT: Also, he says, and I quote from Page 1220 of the opinion, which is at 420 US 1215, Justice Blackmun speaking, quote:

> "The prosecution had not sought to use the statement in this case in chief for it conceded that they were inadmissible under Miranda because Harris had not been advised of his right to appointed counsel."

Same situation, statements having been suppressed at the suppression hearing.

MR. McCAIN: Yes, sir.

THE COURT: Going on with the quote:

> "Chief Justice, speaking for the court, [395] observed at 401 US at 224, 91 S.Ct at 645:
>
> " 'It does not follow from Miranda that evidence inadmissible against an accused in the prosecution's case in chief is barred for all purposes, provided, of course, that the trustworthiness of the evidence satisfies legal standards.' "

It goes on and continues the quote later on, it says:

> "That the 'shield provided by Miranda cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances.' "

The opinion discusses this at some length, and it appears that the risk being that one runs in taking the stand and testifying and denying involvement is that the

government may then, if they have evidence, that is consistent with his present testimony on the stand, even though it is barred under a motion to suppress, it may be used against him.

My concern here is whether or not the government has such evidence.

MR. McCAIN: That's correct.

[396] THE COURT: Now, that's my concern.

If they have such evidence that is inconsistent with something he has said on his direct examination or, indeed, on cross examination, then they may use it.

Now, they have suggested that they have this tee shirt which is—let me mark this for Identification, the next numbered, so we know what we are talking about.

What would it be? No. 3 for Identification?

The government has in the white plastic bag, Government Exhibit 3 for Identification, which is a tee shirt, which was found in Mr. Havens' suitcase at the airport, but not as a result of an illegal and unlawful search, as found by the Magistrate and affirmed by the Court.

They did not use this tee shirt in evidence—I am referring to it as 3—so, don't worry about—

MR. CULVERHOUSE: Government Exhibit 9.

THE COURT: Well, what happened to 3, Pat?

MR. CULVERHOUSE: That was looking at [397] the defense exhibit.

THE COURT: Well, let me start all over again so the record will be clear here.

Is 9 the right number now, Pat?

MR. CULVERHOUSE: Yes.

THE COURT: All right.

[Thereupon, the item referred to was marked for Identification as Government Exhibit No. 9.]

THE COURT: The government has, as Exhibit 9 for Identification, a tee shirt that was found in Mr. Havens' suitcase after it was searched at the airport by agents of the DEA some four hours after Mr. Havens had cleared Customs.

This has been determined to be the result or the fruit of an illegal search—was held by the Magistrate not to

be a border search and therefore they required a warrant to search the luggage—all right.

So, the tee shirt, marked Exhibit 9 for Identification, was not utilized by the government in their case in chief, because they could not use it for any purpose.

It had been suppressed.

[398] Now, the question is, whether or not the tee shirt and questions about the tee shirt would be proper as being inconsistent with something the defendant has said on the stand.

Now, he has not been asked on the stand whether or not he was carrying a tee shirt which had been cut up, or portions cut out of it, which could have been used in the other tee shirt.

He has not been asked that, but I presume you intend to ask that question.

MR. CULVERHOUSE: That was the question I was getting into.

THE COURT: And if he denied that, then you would intend to offer this, not for the proof of his guilt, but for proof of his—

MR. McCAIN: What?

MR. CULVERHOUSE: It would be for impeachment purposes through Agent Martinez.

MR. McCAIN: How can he be impeached, Your Honor, if it was not covered on direct, whether or not he had—

THE COURT: It does not have to be covered on direct. If he denies something under oath, which is—

[399] MR. McCAIN: Well, he wouldn't—if he were asked the question, Judge,

"Was there a tee shirt found, Size 38-40 in your suitcase?"

he is not going to lie under oath. He is going to say:

"Yes, there was."

THE COURT: Fine. Then, that takes care of it.

MR. McCAIN: He is not going to lie under oath. I can guarantee that. Not with me representing him, he won't.

THE COURT: Well, we will soon find out, because I guess he will be asked.

MR. McCAIN: I will guarantee that he will say, he will, if he is asked that question, and he is under oath, and he is required to answer that question because of a ruling by the Court, then he will answer:

> "Yes, there was a Size 38-40 tee shirt found in the luggage,"

in his luggage.

THE COURT: Portions of which had been cut out. Patches or portions, the tail of it had been [400] cut up and out.

MR. McCAIN: Then, as I understand it, from your ruling, then at that point they can put the tee shirt in evidence against us.

THE COURT: Not if he answers truthfully.

MR. CULVERHOUSE: If he says, "Yes"—that's what I was getting at earlier—if he says:

> "Yes, the tee shirt was found,"

my next question, I would proffer, would be:

> "Did you tell Agent Martinez on the 3rd of October that that tee shirt belonged to Mr. McLeroth?"

If he says, "Yes"—

MR. McCAIN: He will say, "Yes."

MR. CULVERHOUSE: I cannot go any further.

THE COURT: Yes. That's all we are talking about.

And the instruction that I give to the jury after the testimony is that—right from the opinion in Oregon vs. Haas, it says—the trial judge there, the court approved the instructions—instructed, quote:

[401] "The statement made by Haas [sic] to the officer may not be used by you as proof of the defendant's guilt, but you may consider that testimony as it bears on the credibility of the defendant as a witness when he testified on the witness stand."

So that's the instruction they get. They cannot consider it as part of guilt, but only as to credibility.

MR. McCAIN: So, I understand the law, that the government may now ask him whether or not there was a tee shirt, Size 38-40, found in Mr. Havens' luggage, which was partially cut out, and he says, "yes," then that's as far as the questioning or anything can go.

THE COURT: They can ask him if he made the statement to Agent Martinez that it belonged to Mr. McLeroth.

MR. McCAIN: Yes. If he says, "yes," to that, then that's the end of it.

THE COURT: That's the end of it. If he denies it, then it's—

MR. McCAIN: May I now have an opportunity to advise my client?

[402] THE COURT: No, sir. You may not. You may not at all. The whole purpose of this is not for you to go out and coach your client as to what to say.

MR. McCAIN: I am not going to tell him what to say.

THE COURT: Well, that's what you just asked me permission to do. That's why I asked him to step out, so he would not hear this discussion.

The whole purpose is searching for the truth. I assume he is going to tell the truth when he comes back in. If he does that, that's the end of it.

If he does not, why—all right, bring the jury in.

Get the jury and then we will ask the witness to come in.

Give him the tee shirt back. It is marked for Identification. You may leave that in here. Keep it right in here in your briefcase.

MR. McCAIN: May I get my client?

THE COURT: Would you wait just a minute? The Marshal will get him in just a second.

Pat, would you go out and ask Mr. Havens to step in, please, and take a seat in the witness box.

[403] There will be no conversation with the witness.

Bring the jury.

[Jury present.]

THE COURT: All right, be seated. We excused the witness while we had this out of court discussion on the law.

He is coming right now.

[Thereupon, at 11:37 all parties were present, and the defendant resumed the witness stand.]

THE COURT: Just have a seat. All right, Mr. Culverhouse.

MR. CULVERHOUSE: Thank you, Your Honor.

CROSS EXAMINATION [Continued]

BY MR. CULVERHOUSE:

Q. Mr. Havens, calling your attention to the testimony earlier when I was on cross examination, you said that you wear a Size 44-46 tee shirt. Is that correct?

A. Yes. That would fit me.

Q. But you don't wear a Size 38 to 40 tee shirt?

[404] A. No. Not for many years.

Q. On October 2, you flew from Peru into the Miami International Airport, is that correct?

A. Yes, I did.

Q. And you took your baggage and cleared Customs; is that correct?

A. Yes.

Q. On that day, sir, did you have in your luggage a Size 38-40 medium man's tee shirt with swatches of clothing missing from the tail of that tee shirt?

A. Not to my knowledge.

MR. CULVERHOUSE: Can I have an Identification tag put on this?

THE COURT: Consider it as Government's 9 for Identification. And show it to the witness.

BY MR. CULVERHOUSE:

Q. Mr. Havens, I'm going to hand you what is Government's Exhibit 9 for Identification and ask you if this tee shirt was in your luggage on October 2nd, 1975.

A. Not to my knowledge. No.

Q. Sir, on October 3, 1977, you were leaving Miami, Florida, to return to Ft. Wayne, Indiana. [405] Is that correct?

A. That's correct.

Q. And, at that time, did you pick up your luggage from Agent Martinez of the Drug Enforcement Administration?

A. Yes, I did.

Q. And, at that time, did you tell Agent Martinez that that tee shirt that was found in your luggage did not belong to you, but belonged to John McLeroth?

A. No, I did not say those words. No.

Q. What words did you say?

A. I said that—they showed me a tee shirt when I went up to pick up my luggage, and this may well have been the tee shirt that they showed me, I don't know, they said:

"What size shirt do you wear?"

And I said, "I wear," I think I said, "a 46, usually."

But I don't wear—I don't wear this type of shirt. My shirts—my undershirts are the single straps over the—and—so, I said;

"I"—they asked me, I believe, if Mr. McLeroth wore this size shirt.

[406] And I said, "He probably does. He is somewhat smaller than I."

But I said, "I definitely don't wear this size shirt."

They held this one up and they held another one, I think, or one that looked like this, and another one, and to my knowledge, that was the first time that I had seen those shirts, and I don't know whose they were or whose they are. I know they're not mine. I know I didn't put them in my suitcase.

And, I know I didn't see them in my suitcase.

I only saw these—well, I'll take it back.

The agent the next—the day I took my luggage, the agent brought in my suitcase.

And he said, "Let me give you a receipt for this."

"For your suitcase back."

And I says, "I don't need a receipt. I just want to get out of here." I had spent the night in jail.

And he said, "No, no, let's look through it."

[407] So, he reached in the suitcase and pulled this out.

And this was the first time that I had seen the shirt.

He said, "Is this yours? "

And we went through that conversation that I just related.

MR. CULVERHOUSE: May I approach the witness, Your Honor?

THE COURT: Yes.

BY MR. CULVERHOUSE:

Q. Mr. Havens, I am going to hand you what has been marked as Government's Exhibit 10. It's in a bag. If you wish to remove it, fine.

Otherwise, it's a Size 38-40 medium tee shirt by the same manufacturer as Exhibit No. 10.

Have you ever seen this one, sir? Calling your attention to October 2, 1977.

MR. McCAIN: May we approach the Bench?

THE COURT: All right. Well, just a moment.

[Bench conference.]

MR. McCAIN: Now, he has testified that that tee shirt that agent pulled out of his suitcase [408] and showed him, as I understand it, that is similar.

THE COURT: They can go ahead on impeachment, because he denied any connection with it.

MR. McCAIN: What he said was that the agent pulled it out of the suitcase on that day.

THE COURT: Yes, I heard him.

MR. McCAIN: So I understand, he said this was in the suitcase that the agent pulled it out.

THE COURT: That was not the thrust of his trying to tell this jury. I guess the thrust is that the agent put it in there.

MR. McCAIN: Could I voir dire and ask him the thrust of his testimony? I know it is not. I know that's not what he's trying to tell the jury. I will let counsel ask him that.

THE COURT: He wants you to ask him whether or not he is suggesting that the agent put it in there.

[In open court.]

BY MR. CULVERHOUSE:

Q. Sir, looking at Exhibit No. 10 for Identification—would you like that tee shirt taken out of that bag?

A. No. I think they all look alike. [409] Except for the size and the label.

Q. And that tee shirt is Size 38-40 in that bag?

A. Yes. Medium, 38-40.

Q. And it's like Exhibit No.—

A. I couldn't say. Yes, the label appears to be identical.

Q. Sir, is it your testimony that on October 2, 1977, when you came through Customs that this was not in your suitcase?

A. No. I never saw these items in my suitcase until an agent pulled them out of the bag on October 3rd; the day afterwards when I went to pick them up.

I'm not saying they weren't in my suitcase. I don't know that. I know that if they are in my suitcase I had no knowledge of them being there.

Q. Did you pack your suitcase?

A. Yes, I did.

Q. In Peru.

A. Yes.

Q. Sir, are you suggesting that the agents of the Drug Enforcement Administration placed this in your suitcase?

[410] A. I am not suggesting anything. I am just testifying to what I know.

MR. CULVERHOUSE: Thank you.

Your Honor, at this time, I would have no more questions of Mr. Havens. But, I would like to call a rebuttal witness.

THE COURT: Let's wait until the defense rests. Do you have any redirect examination?

MR. McCAIN: No, Your Honor. He may step down. But, we have not rested.

THE COURT: I just said that. I just said:

"We will have to wait until the defense rests."

MR. McCAIN: I have, I think, two short witnesses that I would like to get on now, Judge.

THE COURT: All right, fine.

MR. McCAIN: Sit down, Mr. Havens.

[Witness excused.]

* * * * *

[CHARLES O. MARTINEZ]

[438] DIRECT EXAMINATION

BY MR. CULVERHOUSE:

Q. Mr. Martinez, just to go back over one point. Were you on duty on October 2, 1977?

A. Yes, I was.

Q. Were you at the Miami International Airport on that date?

A. I was.

Q. And, on that day, did you see the defendant, J. Lee Havens?

A. I did.

Q. Approximately what time of the day did you see him?

A. Approximately 4:00 p.m. in the afternoon.

Q. And, did you have a discussion with Mr. Havens in the offices of Customs or DEA?

A. I did.

Q. And, was his suitcase there?

A. Yes.

Q. Sir, did you examine the contents of this suitcase?

A. Yes.

Q. In the presence of Mr. Havens?

[439] A. I did.

Q. Mr. Martinez, I am going to hand you what's previously been marked as Government's Exhibit No. 9.

MR. CULVERHOUSE: Your Honor, may I approach the witness.

BY MR. CULVERHOUSE:

Q. I would like you to take this out of the bag and tell me if you can identify it.

A. Yes, I can.

Q. What size is that?

A. This is a Fruit of the Loom tee shirt, Size 38-40.

Q. How can you identify it?

A. I placed a sticker, which we use to identify pieces of evidence, which bears my name on it.

Q. Where did that come from?

A. This came from Mr. Havens' suitcase on that date.

Q. And, this was taken out of the suitcase in his presence?

A. Yes.

MR. CULVERHOUSE: May I approach the [440] witness?

BY MR. CULVERHOUSE:

Q. I am going to show you what's previously been marked for Identification as Government's Exhibit No. 10.

I am going to ask you the same question.

Can you identify it?

A. Yes, I can.

Q. What is it?

A. That's the second tee shirt which was removed from the same suitcase; Mr. Havens' suitcase.

Q. What size is it?

A. It's a 38-40.

Q. Was this removed in the presence of Mr. Havens?

A. Yes.

Q. From his suitcase?

A. Yes.

Q. On October 2?

A. Yes.

Q. And you saw it removed?

A. Yes, I did.

Q. Did you ask Mr. Havens about this?
A. I did.
[441] Q. And, what did he say?
A. He said that these were not his tee shirts; that they belonged to Mr. McLeroth.
MR. CULVERHOUSE: Thank you. I have no further questions.

CROSS EXAMINATION

BY MR. McCAIN:

Q. You didn't find anything like any cocaine or anything in that suitcase at all; did you?
A. I did not find any cocaine in the suitcase.
Q. Or in his person?
A. That's correct.
MR. McCAIN: Thank you. That's all.
MR. CULVERHOUSE: Your Honor, at this time, the government would introduce into evidence Exhibits 9 and 10.
MR. McCAIN: Judge, we have the same objection as we made earlier.
THE COURT: Overruled. Admitted into Evidence, as Exhibits 9 and 10.

[Thereupon, Government's Exhibits Nos. 9 and 10, respectively, were received into Evidence.]

[442] THE COURT: All right, ladies and gentlemen, at this time, counsel for the respective parties can talk to you in their closing argument during which they will argue their respective views of the case as they see it and understand it.
This argument is not evidence as you have been hearing from the witness stand. It is just intended to be helpful to you in arriving at your decision.
All right. Mr. Culverhouse.

[RELEVANT PORTIONS OF SUPPLEMENTAL TRIAL TRANSCRIPT]

[12] [CLOSING ARGUMENT OF MR. CULVERHOUSE]

* * * * *

The four trips of Mr. Havens to South America and one trip of Mr. Vigil to North America, exact zero sales, were completed. There's no incorporation papers. There's no sales. There is no nothing except expenses of flights to South America and expenses of flights to North America.
Finally, ladies and gentlemen, let's consider the testimony of Mr. Havens.
Mr. Havens tells you that when he came into America, the airport, on October the 2nd, and when he was arrested, he said he didn't know what Mr. McLeroth was doing down there.
According to the conversation, Mr. Martinez related to you. He didn't know what his friend was doing, but his friend traveled with him three or four times down there.
Ladies and gentlemen, he also asks you to believe him when he was on the stand and when he was on the stand he was asked a pertinent question that we have just gone through. All of you were here.
He was asked if, when he came through at Customs, he carried two tee shirts, size 38, size 40.
Now, the government's going to ask you [13] when you take back all of the evidence to take the two tee shirts, size 38, size 40, and compare them with Government's Exhibit 3.
One tee shirt, size 38. The government is more interested in the credibility of the question when Mr. Havens was asked:

"Did you bring back two tee shirts, size 38, size 40?"
"Did you bring it in on October 2nd?"
"Was it in your suitcase?"

And he said, "No."
You heard it.

Mr. Martinez testified not more than five minutes ago that when he looked in the bags, when he took the clothes out of Mr. Havens' suitcase, there were two tee shirts, Exhibit 9 and Exhibit 10, size 38, size 40.

When the issue gets down to the credibility of the two parties, Mr. McLeroth, who has confessed his part in the crime, who has confessed and said:

"I'm guilty,"

and you have Mr. Havens, who stood in front of you and lied to you.

* * * * *

SUPREME COURT OF THE UNITED STATES

No. 79-305

UNITED STATES, PETITIONER

v.

J. LEE HAVENS

ORDER ALLOWING CERTIORARI. Filed November 26, 1979

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

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